

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 584/2006

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 13, 2007.

Heard Shri Gupta for the appellants, and
Shri Kotwal for the respondents.

The appellants are the original defendants.
A suit was filed by the respondents seeking for
permanent injunction restraining the
appellants/defendants from obstructing their right
of way through the fields of the defendants.

Both the Courts held that there was a
customary right of way through the fields belonging
to the defendants.

It is not in dispute that the defendants had
purchased the suit property in the year 1993. The
suit was instituted in the year 1994. The
defendants were cultivating the field of the
predecessor-in-title of the defendants since the year
1984, till the defendants purchased the suit field in
the year 1993. The defendant had admitted in his
cross-examination that he had not obstructed the

way of the plaintiffs through the suit fields from 1984 to 1993. Thus, it is apparent from the cross-examination that there was a customary right in favour of the plaintiffs to use the suit way for taking their carts and cattle.

Both the Courts have recorded concurrent findings of fact that the plaintiffs have proved the customary right to pass through the fields of the defendants and the appellate Court has further held that the plaintiffs have a right to pass through the disputed way throughout the year.

The findings recorded by both the Courts do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP